IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.395 OF 2004

Chandrakant Harishchandra Rajwadkar
& Ors. ..Appellants.
Vs.
Sahadeo Shankar Phatak & Ors. ..Respondents.

Mr.Nitin Mulye h/for Shri G.S.Godbole, advs. for the Appellants.

Mr.Sharvari Shelar h/for P.S.Dani, advs. for the Respondent Nos.2 to 5.

CORAM : J.H.BHATIA, J.
DATE : AUGUST 24, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. This is an appeal filed by the original plaintiffs against the dismissal of their suit on the ground that the plaintiffs are the partners of the firm but are not registered and, therefore, in view of Section 69 of the Indian Partnership Act, they can not institute any suit to enforce a right arising out of any contract.

3. To state in brief, it is the case of the plaintiffs that they, alongwith defendant no.4, for and on behalf of the Apna Agro Development Corporation entered into an agreement with the defendant nos.1 to 3

to purchase the agricultural land for a consideration of Rs.3,25,730/-. Amount of Rs.51,000/- was paid as earnest money. The defendant nos.1 to 3 failed to execute the sale deed as per the terms of the contract therefore, they filed a suit for specific performance of the contract. The defendant nos.1 to 3 took a plea that from the terms of the alleged agreement as well as from the pleadings of the plaintiffs, it is clear that the plaintiff nos.1 to 3 and the defendant no.4 formed a partnership firm in the name of Apna Agro Development Corporation and as the said firm is not registered, suit is not tenable in view of Section 69 of the Indian Partnership Act. On behalf of the plaintiffs, two witnesses were examined to show that Apna Agro Development Corporation was not a partnership firm and was not even in existence and that the plaintiffs and defendant no.4 had only intended to constitute and create such Apna Agro Development Corporation but it never came into existence. After hearing the evidence of both the witnesses and after perusal of the agreement as well as the pleadings, the learned trial Court dismissed the suit.

4. On perusal of the agreement for sale dated 4th November, 1988 on the basis of which the suit was filed, it becomes clear that the agreement was entered into by the defendant nos.1 to 3 on one hand and by the

plaintiffs and the defendant no.4 for and on behalf of the Apna Agro Development Corporation on the other hand. From this it is clear that Apna Agro Development Corporation had entered into an agreement to purchase the property. The agreement nowhere shows that the plaintiffs and the defendant no.4 wanted to purchase the property as co-owners having their individual shares in the said property. In the plaint, it is mentioned that the plaintiffs were owners, conductors and partners (Malak, Chalak and Bhagidars) of Apna Agro Development Corporation. From this it is clear that the plaintiffs pleaded in the plaint that they were the partners in Apna Agro Development Corporation and the said Apna Agro Development Corporation had entered into an agreement for the purchase of the property. It was nowhere pleaded that the plaintiffs and the defendant no.4 had come together to purchase the property from the defendant nos.1 to 3 with their definite individual shares or as co-owners of the said property. It is well understood that when a person is running business as a sole proprietor, it is known as proprietorship concern and if two or more than two persons come together and enter into a contract and carry on business in a common name, it may be either a partnership firm or it may be a private limited company or a public limited company registered under the Companies Act. Only exception to this is Hindu

Undivided Family running a business where the members of Undivided Hindu Family carry on family business in the common name and still they are not partners and the HUF is not a partnership firm within the meaning of Indian Partnership Act as provided under Section 5 of the Indian Partnership Act. It is not the case of the plaintiffs that they were carrying on business as HUF in the name of Apna Agro Development Corporation. As four persons had come together to carry on business, it must be held that it was partnership firm. Admittedly, the Apna Agro Development Corporation was not registered as partnership firm under the Indian Partnership Act and, therefore, in view of provisions of Section 69, it can not sue against any persons to enforce any rights against such persons, nor the partners can sue in their individual names to enforce the rights accrued to the partnership firm.

5. In view of the contents of the disputed agreement and the pleadings of the plaintiffs themselves, I find that the learned trial Court was right in holding that the suit is not tenable. There is no substance in the appeal.

6. Appeal stands dismissed.

[J.H.BHATIA, J.]